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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record (partial)* of the 1st meeting

Held at the Palais des Nations, Geneva, on Monday, 22 February 2016, at 10 a.m.

Chair: Mr. Sadi

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Opening of the session

1. **The Chair** said that, while the Committee would be considering fewer States parties' reports than usual during the current session, it had a number of other matters to deal with, including its work on general comments and improvements to its working methods.

2. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that 2016 marked the fiftieth anniversary of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. While growing inequalities and the withdrawal of existing rights in response to migration and terrorism were causes for major concern, the adoption of the Sustainable Development Goals gave room for hope that the Covenants would be more broadly implemented in the near future.

3. OHCHR had made the anniversary one of its main campaigns for 2016, beginning with a photo exhibition launched on 16 December 2015, and the activities planned for the coming year included a high-level panel discussion within the Human Rights Council and a side event that would allow civil society organizations to give their views on the challenges to implementing the Covenants. The Committee would hold a joint plenary meeting with the Human Rights Committee at its next session, and the General Assembly would devote one plenary meeting during its seventy-first session to marking the anniversary. An event would be held in New York on 16 December 2016 — the actual date of the anniversary.

4. In addition, OHCHR planned to raise awareness of the Covenants among a wider audience, particularly among children and young people. A microsite had just been launched with promotional materials such as a human rights game for children, a colouring book and a quiz. The Office had prepared fact sheets on the Covenants, an easy-to-read version of each of them and a pocket-sized list of the rights they contained, as well as videos demonstrating the impact of the Committee's work. The celebrations focused on both Covenants, as recent history had demonstrated that it was unhelpful to separate the rights set out in them. The fiftieth anniversary provided an occasion to strengthen the link between them even further.

5. **The Chair** said that the Universal Declaration of Human Rights did not compartmentalize the two dimensions of the human rights system and that the anniversary could serve as a reminder that, in practice, any such separation was impossible.

Adoption of the agenda

6. *The agenda was adopted.*

Statements by NGOs

Kenya

7. **Ms. Wanjiku Waihenya** (Haki Jamii, Federation of Women Lawyers (FIDA) — Kenya and the Global Initiative for Economic, Social and Cultural Rights) said that, while the legal reforms in Kenya provided for formal equality between men and women, substantive equality had still not been achieved. Despite legal protection, women remained at a disadvantage with regard to ownership, mainly because of customary laws and practices that prohibited them from owning or inheriting land and other forms of property.

8. There were also gaps in the law which the Government should address by repealing any sections of enabling laws that did not comply with the Constitution, while the judiciary should use international laws and practices as the basis for its decisions on matters concerning the division of matrimonial property. The Government should ensure that women's rights and gender issues were integrated into its planning and budgeting and raise awareness about women's land and property rights, including through refresher courses for government officials and the use of community media.

9. The bills on community land and on eviction and resettlement provided a further opportunity for the Government to enhance gender equality, by ensuring the principle of non-discrimination, including a provision requiring communities to make use of mechanisms that specifically involved women and enacting the eviction and resettlement bill to discourage parliament from replacing progressive laws with reactionary ones.

10. **Ms. McKernan** (The Global Initiative for Economic, Social and Cultural Rights) said that, while the Constitution of Kenya recognized the right to education as fundamental, there were concerns about its implementation. In recent years, there had been a sharp increase in the privatization of education, with encouragement from the State, and that phenomenon had led to serious inequalities and segregation. Low-fee private schools were being operated in Kenya by for-profit international corporations. Rather than providing an alternative that enabled parents to educate their children in accordance with their moral and religious beliefs, such schools instead provided a low-quality fee-charging option in response to the State's inability to provide free education for all.

11. **Ms. Nyanjong** (International Commission of Jurists) said that, while economic, social and cultural rights were recognized in the Kenyan Constitution, civil society organizations were concerned about the pace at which those rights were being given effect in practice. Although the judiciary had been very progressive in issuing decisions recognizing the Covenant rights, those decisions had yet to be implemented. She encouraged the Committee to ask the Government of Kenya how it was involving the Endorois people in the implementation of the rulings of the African Commission on Human and Peoples' Rights that concerned them.

12. It would also be useful to ask the Government about the implementation of the recommendations made by the Truth, Justice and Reconciliation Commission in its report, particularly those concerning the marginalization of communities. Other issues of concern included the representation of women in politics, the effects of corruption and bad governance at the county level on Covenant rights, and the lack of consultation with local communities during the drafting of the Prohibition of Female Genital Mutilation Act, which had failed to stop that harmful practice.

13. **The Chair** asked the NGO representatives to provide copies of their statements in writing and invited the Committee members to ask follow-up questions.

14. **Mr. Kerdoun** asked whether the customary practices in Kenya that were discriminatory against women, particularly those concerning marriage and inheritance, were set out in positive law. He also asked whether there was any specific legislation on women's rights in Kenya.

15. **Mr. Kedzia** asked whether there were any studies showing the impact of corruption and bad governance on Covenant rights in Kenya. He said he would like to know whether the lack of consultation was the main reason that the Prohibition of Female Genital Mutilation Act was not proving to be effective, or whether there were other factors at play.

16. **Ms. Bras Gomes** asked if the NGO representatives could provide examples of how the formal recognition in the Constitution of Covenant rights had resulted in improved implementation of those rights.

17. **Mr. Dasgupta** said that he wished to know the current status of the draft national policy on internally displaced persons and what obstacles were preventing its adoption. He asked whether any progress had been made towards clarifying the regulations for implementation of the principle whereby no more than two-thirds of the members of an elected body may be the same gender. He also wished to know whether any progress had been achieved in the implementation of the Prohibition of Female Genital Mutilation Act.

18. **Mr. Schrijver** requested additional information about any compensation that had been or would be awarded to members of the Endorois community.

19. **The Chair** suggested that, given the time constraints, the civil society representatives could respond to the questions at the luncheon briefing scheduled for Thursday, 25 February 2016.

20. *It was so decided.*

Canada

21. **Mr. Porter** (Social Rights Advocacy Centre), speaking as co-coordinator of the Canadian NGOs present, said that the large number of organizations providing input to the Committee about the situation in Canada was a testament to civil society's strong commitment to ensuring the fulfilment of that State's obligations under the Covenant. The organizations were hopeful that the new Government might have brought an end to a very dark period for human rights in Canada, but that was in no way certain. He encouraged the Committee to help clarify the Government's emerging commitments to a more positive relationship with the United Nations. A summary of key issues raised in the various NGO submissions had been provided to the Committee and would be used to organize the luncheon briefing.

22. **Ms. Farha** (Canada Without Poverty), speaking as co-coordinator of the Canadian NGOs present, said that, while she welcomed the new Government's fresh approach to governance in Canada and to its relationship with the international human rights mechanisms, it also needed to modernize its approach to the Covenant rights. She was confident that the Committee would be able to encourage the Government to revisit its positions on Covenant rights and ensure their justiciability and implementation in the country.

23. **The Chair** said that, in the light of the Canadian Government's new commitment to economic, social and cultural rights, it would be useful for its leaders to mention the Covenant on occasion — something they rarely, if ever, did.

24. **Ms. Gunn** (Indigenous Bar Association) said that the Covenant rights of indigenous peoples in Canada were violated as a result of systemic racism in the health-care system that produced lower health outcomes and limited access to services; the lack of safe drinking water and sanitation; food insecurity; inadequate housing and overcrowding; the lack of employment and lower educational attainment; the lack of protection of indigenous culture and languages; the lack of participation in decision-making, including free prior and informed consent; the lack of recognition of traditional land rights and self-government; and violence against indigenous women.

25. Although the Canadian Charter of Rights and Freedoms included a provision that recognized aboriginal and treaty rights, that recognition had not resulted in protection for indigenous peoples in practice. Instead, the onus was on them to prove each right, based on stringent tests developed by the Canadian courts, and the federal Government

actively opposed the recognition of rights in the courts, forcing protracted litigation. Systemic racism within government institutions and inadequate funding for social services further impeded the realization of indigenous peoples' rights under the Covenant. The Truth and Reconciliation Commission of Canada had released its final report in 2015, with many calls for action on economic, social and cultural rights. She urged the Committee to ask Canada how it planned to work with its indigenous peoples to realize their Covenant rights.

26. **Mr. Calderhald** (Charter Committee on Poverty Issues) said that, in past interactive dialogues with the Committee, representatives of the Government had stated that the Charter protected the right not to be deprived of basic necessities and could be interpreted as placing positive obligations on the Government to guarantee social and economic rights. Yet government litigation lawyers invariably urged the courts to interpret the Charter in a manner intended to defeat the constitutional protection of those rights. He urged the Committee to remind Canada that the Covenant rights must be accompanied by effective remedies and the courts must interpret and apply the Charter in a way that was consistent with those rights.

27. **Ms. Day** (Canadian Feminist Alliance for International Action) said that she urged the Committee to raise the need for the new Government to embrace its obligations under the Covenant and to foster interpretations of the Charter that included and encompassed economic, social and cultural rights. She wished to highlight the strong connection that existed between the social and economic marginalization of women in Canada and violence committed against them, which was tragically illustrated by the crisis of the missing and murdered indigenous women and girls in Canada. In its own inquiry into the events, the Committee on the Elimination of Discrimination against Women had recently found Canada to be in grave violation of the Convention on the Elimination of All Forms of Discrimination against Women, owing to its failure to fulfil the economic rights of indigenous women and girls. She urged the Committee to ask Canada to ensure that the national inquiry into missing and murdered indigenous women and girls fully examined and remedied the profound social and economic disadvantages to which the victims were subjected and that its scope also extended to all the country's territories and provinces.

28. **Mr. Neve** (Amnesty International) said Canada must first of all end its long-standing treatment of economic, social and cultural rights as second-rate rights not suitable for full legal recognition and enforcement. It must also incorporate into Canadian law the crucial right to free, prior and informed consent for indigenous peoples and back it up with concrete action. The discrimination that occurred in the areas of education, child protection and access to safe water for indigenous peoples also needed to be addressed. The State party must develop a comprehensive national action plan to address violence against all women and girls in Canada and amend the Canadian Human Rights Act and the Criminal Code provisions on hate crimes to include gender identity and gender expression in an effort to ensure better protection for transgender persons in Canada.

29. **Ms. Vaugrante** (Amnesty International) said that Canada must develop health-care services for all legal migrants; reform laws on domestic migrant workers; provide inclusive education for children with disabilities; significantly reduce the use of solitary confinement, especially for minors and persons with mental illness; ensure respect for human rights in business practices by establishing an ombudsman in that area; develop national strategies based on the rights to food and housing; ensure that the austerity measures implemented in Quebec and their cumulative effect were rigorously assessed in order to avoid discrimination; and organize a meeting between all ministers responsible for human rights in order to develop an efficient national system to give effect to economic, social, cultural and all other rights.

30. **Mr. Kerr** (Colour of Poverty — Colour of Change) said that there were many links between the struggles of the First Peoples of Canada and those of other "peoples of colour", or non-Caucasians, both in Ontario and across Canada. By 2017, nearly one third of the population of the Province of Ontario and one fourth of the national population would be First Peoples or peoples of colour, but dramatic increases in the rate of poverty of those groups in recent decades meant that many of their members risked falling below the poverty line. In response to the lower average wages earned by workers of colour compared with their Caucasian counterparts, government at all levels must ensure that mechanisms for hiring, promoting and retaining workers were inclusive and bias-free. They should also compile regular statistics on the socioeconomic participation of those communities in society and the disadvantages they faced.

31. **Ms. Casipullai** (Canadian Council for Refugees) said that Canada often tied Covenant rights and associated benefits to immigration status, thus excluding people with non-permanent or irregular status from their enjoyment, in violation of article 2 (2) of the Covenant. Accessing economic, social and cultural rights was also significantly harder for non-citizens, many of whom were denied citizenship on the basis of poverty. She urged the Committee to consider the issue of discrimination based on immigration status as a barrier to accessing many of the rights protected under the Covenant.

32. **Ms. Lee** (Council of Canadians with Disabilities) said that, in spite of the Committee's recommendations and the ratification by Canada of the Convention on the Rights of Persons with Disabilities, the Government had not implemented a plan to address the unequal status of persons with disabilities or formulated a coordinated policy response to that issue. Moreover, the programmes it did have failed to provide adequate income and basic supports. Persons of working age with disabilities were twice as likely as others to live in poverty, and their employment rate was only half that of the general population. The employment rates for young persons with disabilities, indigenous persons with disabilities and women with disabilities were even lower.

33. In 2012, more than 750,000 persons had qualified for the Disability Tax Credit but had not benefited from it owing to inadequate income. She urged the Committee to request the Government to consider converting it to a refundable benefit. Owing to the lack of affordable and accessible housing and community services, people with disabilities were often compelled to live in segregated institutions that violated their right to live in the community. Children and adults with disabilities continued to be denied the right to immigrate with their families, on the reasoning that doing so would place excessive demands on social and public health services. That policy devalued human diversity and ignored the contributions to society made by persons with disabilities. She asked the Committee to raise those pressing issues with the Canadian delegation and to refer to them in its concluding observations.

34. **Ms. McLachlan** (Canada Without Poverty) said that the country's high gross domestic product and the decline in its social spending stood in sharp contrast to the large number of homeless, food insecure and poverty-stricken members of its population. Canada had completely divorced its social programmes and policies from its human rights obligations and thus failed to connect poverty, homelessness or food insecurity with human rights. In order to remedy those problems, Canada must promote interpretations of the Charter that protected Covenant rights; recognize poverty as a prohibited ground of discrimination; and link all socioeconomic policies and programmes with its human rights obligations. It must develop a rights-based national poverty elimination strategy with measureable goals and timelines, and with monitoring, review and claiming mechanisms.

35. **Ms. Lucier** (La Ligue des Droits et Libertés — Section Québec) said that, although federal Government transfers to social welfare programmes had increased over the previous few years, they remained well below their level of the 1990s. The current benefits barely covered recipients' rent and left very little for their other basic needs, in direct violation of the right of all people to enjoy social security and a sufficient standard of living. Her organization was concerned at the Quebec government's plans to reform income security though a bill that would make social assistance conditional on participation in employability programmes. She urged the Committee to emphasize to the Canadian delegation that such a law would violate the right to work, which included the right of all persons to the opportunity to gain their living by work which they freely chose or accepted.

36. **Mr. Creek** (Right to Housing Coalition) said that the national housing crisis in Canada was being ignored by all levels of government. In the Province of Ontario, some 168,000 persons were on active waiting lists for affordable housing and there were some 235,000 homeless people in Canada as a whole. A Homeless Memorial in Toronto recorded the names of 794 people who had died on the city's streets. Disproportionate numbers of women, persons with disabilities, indigenous persons, older and young persons and recipients of social assistance were affected by homelessness and the lack of affordable housing. Both Ontario and Canada were violating the Canadian Charter by withdrawing government funding for affordable and adequate housing and failing to address the growing crisis of homelessness. He hoped that the Committee's consideration of the State party's periodic report would highlight in the strongest terms possible that Canada must do more, and that article 11 of the Covenant must be enshrined in the Canadian Charter.

37. **Mr. Saillant** (Front d'Action Populaire en Réamenagement Urbain) said that neither Canada nor Quebec had followed up properly on the Committee's recommendation that federal, provincial and territorial governments should address homelessness and inadequate housing as a national emergency. The overall federal housing budget had not risen appreciably in 25 years and, while both rents and the number of low-income households had risen, the subsidies paid to needy households had not been increased in 15 years. Worse still, existing long-term social housing subsidies for 0.5 million households would soon disappear, which would have a disastrous impact on the living conditions of current recipients.

38. **Ms. Larkin** (Pivot Legal Society) said that national anti-camping legislation that prohibited sleeping and sheltering in public spaces only served to perpetuate prejudice and discrimination against homeless persons. The State party should therefore take steps to repeal discriminatory housing laws, uphold the right of homeless persons to an adequate standard of living and health, and ensure that provinces and municipalities were aware of their obligations under the Covenant.

39. **Ms. Da Silva** (Grassy Narrows First Nation) said that the water supply of her indigenous community had been contaminated with mercury and other chemicals, which had led to an increase in illness and birth defects in the local population. They had been obliged to drink bottled water in recent years as the water supply remained untreated and unsafe for consumption, and their experience was not unique among indigenous communities.

40. **Ms. Redsky** (Human Rights Watch), speaking on behalf of the Shoal Lake 40 First Nation, said that the Government had not met its obligations under the Covenant in relation to the rights to water and sanitation. Many indigenous communities faced inequality and institutionalized discrimination and could not access essential basic services, such as a clean water supply, medical care and education.

41. **Ms. Kennell** (Action Canada for Sexual Health Rights) said that, although the Government supported access to sexual and reproductive health services, it had not yet indicated how it intended to reverse its predecessor's stance on overseas development aid for that purpose. It had also failed to provide affordable and safe abortion services in the country and had not done enough to combat the discrimination faced by transsexual persons. Indigenous peoples continued to experience systemic discrimination when trying to access medical care, especially sexual and reproductive health-care services. There was a lack of effective sexual and reproductive health education in schools and young persons in Canada demonstrated an abject lack of knowledge in the area. Disaggregated data on sexual health trends were not collected systematically. She urged the Committee to raise such failings during its dialogue with the State party.

42. **Ms. Pillay** (Canadian Civil Liberties Association) said that the Committee should encourage the Government to provide effective legal remedies for victims of international human rights violations committed by Canadian companies operating overseas. The State party must also ensure that indigenous communities were properly consulted on development projects that affected their lands. Her organization remained gravely concerned by discriminatory practices used by the State against vulnerable groups, such as disproportionate sentencing and excessive bail conditions, and called for greater support to be made available to vulnerable persons, including persons with mental illness, homeless persons and indigenous peoples. Efforts must also be made to uphold cultural rights and guarantee equal access to the Internet in all areas of the country, particularly remote and rural areas such as the far north.

43. **Mr. Grames** (David Suziki Foundation) said that the Government had failed to tackle climate change effectively and, over the past decade, had weakened aspects of environmental protection crucial to the realization of economic, social and cultural rights. Indigenous communities had been disproportionately affected by national development projects which had destroyed their lands and threatened their livelihoods and culture. Their rights to land ownership and prior consultation must be upheld and robust environmental protection legislation must be reintroduced at the earliest possible opportunity.

44. **Ms. McIsaac** (Maytree) said that the obligation to protect and uphold economic, social and cultural rights applied to all levels of government, including municipalities. The State party should therefore ensure that provinces and municipalities devoted appropriate financial and material resources to meeting the economic, social and cultural needs of the local population and adopted charters guaranteeing the Covenant rights.

45. **Mr. Ribeiro Leão** said that he would like to know whether specific legislation had been adopted in recent years to guarantee the economic, social and cultural rights of indigenous peoples and, if so, whether it had been effective. He also asked whether steps had been taken to combat poverty and ensure access to public services for refugees and immigrants. Lastly, he wished to know what policies had been adopted to regulate the activities of Canadian mining and oil companies operating overseas.

46. **Mr. Kedzia** asked whether the State party intended to amend the national Bill of Rights to bring it into line with the provisions of the Covenant.

47. **Mr. De Schutter** asked what steps had been taken to ensure that all levels of government effectively implemented the provisions of the Covenant. He also wished to know more about the Nutrition North Canada subsidy programme, which aimed to make food more accessible and affordable for communities living in the far north of the country, and its impact on the right to food. Information on the measures adopted to take into account the impact of fracking on climate change and the rights of

indigenous peoples would also be welcome. Lastly, he asked whether there had been any examples of cases brought by victims of international human rights violations against Canadian companies operating overseas.

48. **Mr. Mancisidor de la Fuente** asked whether efforts had been made to increase public expenditure on poverty reduction measures and to address the lack of access to safe drinking water for indigenous communities.

49. **Ms. Bras Gomes** asked whether the new Government had made efforts to tackle poverty and recognize its obligations under the Covenant.

50. **Mr. Uprimny** asked what steps had been taken to bring domestic legislation into line with the provisions of the Covenant and combat the systemic discrimination faced by vulnerable groups, such as indigenous peoples and refugees.

51. **The Chair** thanked the civil society representatives for their insightful comments and said that they could provide their replies at the forthcoming NGO side event or in writing, as appropriate.

The discussion covered in the summary record ended at 12.20 p.m.